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No. 01-381

Supreme Court, U.S.
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In The

Supreme Court of the United States

PENOBSCOT NATION, *et al.*,

Petitioners,

v.

GREAT NORTHERN PAPER, INC., *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The Maine Supreme Judicial Court

RESPONDENT COMPANIES' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does the "internal tribal matters" exception in the Maine Implementing Act ("MIA"), 30 Me. Rev. Stat. Ann. § 6206, prohibit disclosure under Maine's Freedom of Access Act ("FOAA"), 1 Me. Rev. Stat. Ann. §§ 401-410, of documents that do not bear on Petitioners' deliberative processes of self-government and relate to a subject that MIA expressly provides is subject to state regulation?

CORPORATE DISCLOSURE STATEMENT

1. Respondent Great Northern Paper, Inc. is a wholly-owned subsidiary of Inexcon Maine LLC. There are no publicly held companies that own 10% or more of the party's stock.

2. Respondent Georgia-Pacific Corporation has no parent companies, and there are no publicly held companies that own 10% or more of its stock.

3. Respondent International Paper Company is a party to this action as successor-in-interest to Champion International Corporation, a named Plaintiff-Appellee in the action below. Prior to January 1, 2001, Champion International Corporation was a wholly-owned subsidiary of International Paper Company, a publicly held company. On January 1, 2001, Champion International Corporation was merged into International Paper Company. International Paper Company has no parent companies, and there are no publicly held companies that own 10% or more of its stock.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

CORPORATE DISCLOSURE STATEMENT ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

STATEMENT OF THE CASE 1

I. The Tribes' Unique Status 2

II. Respondents' Interaction With the Tribes Leading Up to the FOAA Requests 4

III. Respondents' FOAA Requests and the Resulting Litigation 6

IV. Proceedings Subsequent to the Order to Produce Documents 9

REASONS FOR DENYING THE WRIT 12

I. Petitioners Misrepresent Facts That Are Essential to This Court's Ready and Adequate Understanding of the Points Requiring Consideration, and Therefore the Writ Should Not Issue 14

A. Petitioners Repeatedly Misrepresent the Fact That No Court Has Ordered Petitioners to Allow Any Unwanted Access to Tribal Lands, and Therefore the Questions Presented for Review Are Purely Advisory ... 14

1. The Tribes Seek Answers to Advisory Questions 16

2. The Tribes' Arguments Hinge Upon a Non-Existent Order to Allow Access to Tribal Lands 17

TABLE OF CONTENTS – Continued

Page

B. Petitioners Erroneously Claim That the Decision of the Law Court Below Conflicts With the Law as Developed by the First Circuit 18

II. The True Question Presented In This Case Is Whether the Law Court Properly Applied MIA's Internal Tribal Matters Exception to Define the Scope of Petitioners' Production Obligations Under FOAA, and That Question Does Not Warrant Supreme Court Review 23

A. The Tribes' Contention That Any Application of FOAA to Them Regulates an Internal Tribal Matter Is Not Persuasive and Is Not Framed In Terms Applicable to This Case. 26

B. The Question Whether Application of FOAA to the Tribes in This Case Regulates any Internal Tribal Matter Cannot Be Divorced From the Subject Matter of the Documents Ordered Produced 27

C. Even if the Tribes Properly Framed the General Question Whether Subjecting Them to the FOAA in Every Case Regulates an Internal Tribal Matter, Certiorari Would Not Be Appropriate 27

CONCLUSION 30

TABLE OF AUTHORITIES

Page

CASES

Akins v. Penobscot Nation, 130 F.3d 482 (1st Cir. 1997) ..... *passim*

Couturier v. Penobscot Indian Nation, 544 A.2d 306 (Me. 1988) 22

Gully v. First National Bank, 299 U.S. 109 (1936) 14

Forrest Associates v. Passamaquoddy Tribe, 760 A.2d 1041 (Me. 2000) 29

Montana v. U.S., 450 U.S. 544 (1981) 20

Passamaquoddy Tribe v. State of Maine, 75 F.3d 784 (1st Cir. 1996) 22

Penobscot Nation v. Fellencer, 164 F.3d 706 (1st Cir. 1999) 3, 4, 8, 20, 21, 22

Penobscot Nation v. Georgia-Pac. Corp., 106 F. Supp. 2d 81 (D. Me.), *reconsideration denied*, 116 F. Supp. 2d 201 (D. Me. 2000), *aff'd on other grounds*, 254 F.3d 317 (1st Cir. 2001) 7, 9

Penobscot Nation v. Georgia-Pacific Corp., 254 F.3d 317 (1st Cir. 2001) 2, 4, 12, 13, 21

Penobscot Nation v. Stilphen, 461 A.2d 478 (Me.), *appeal dismissed for want of substantial federal question*, 464 U.S. 963 (1983) ..... *passim*

Shoshone Mining Co. v. Rutter, 177 U.S. 505 (1900) 14

Solman Distributors, Inc. v. Brown-Forman, 888 F.2d 170 (1st Cir. 1989) 22

U.S. v. Boots, 80 F.3d 580 (1st Cir. 1996) 22

TABLE OF AUTHORITIES

Page

STATUTES

25 U.S.C. § 1725(h) 20

25 U.S.C. § 1733 3

25 U.S.C. § 1735(b) 20

33 U.S.C. § 1377(e) 5

1 Me. Rev. Stat. Ann. § 408 6

1 Me. Rev. Stat. Ann. § 409(2) 8

30 Me. Rev. Stat. Ann. § 6204 .....3, 5, 21, 25, 26

30 Me. Rev. Stat. Ann. § 6206 .....1, 3, 21, 26

30 Me. Rev. Stat. Ann. § 6206(1) 20, 28

30 Me. Rev. Stat. Ann. § 6206(3) 29

RULES

Me. R. Civ. P. 62(a) 10

Sup. Ct. R. 10 .....23, 24

Sup. Ct. R. 14.4 14

STATEMENT OF THE CASE

This case comes before the Court from the decision and order of the Maine Supreme Judicial Court, sitting as the Law Court, affirming in part and vacating in part an order of the Maine Superior Court requiring Petitioners to produce documents pursuant to state law.

In the decision below, the Law Court held that Petitioners must comply in part with a document request served on them by Respondents under Maine's Freedom of Access Act, 1 Me. Rev. Stat. Ann. §§ 401-410 (1989 & Supp. 2000) (hereinafter "FOAA"). The Law Court's ruling that Petitioners are partially subject to and partially exempt from FOAA turned on the Court's construction of the "internal tribal matters" exception to the general rule that, in their governmental capacities, the Penobscot Nation and the Passamaquoddy Tribe (hereinafter "the Tribes") are treated like municipalities. *See* 30 Me. Rev. Stat. Ann. § 6206.[1]

This Court has ruled in the past that the Law Court's interpretation of the scope and applicability of Section 6206's "internal tribal matter" exception does not raise a sufficiently substantial federal question to warrant this Court's review. *See Penobscot Nation v. Stilphen*, 461 A.2d 478 (Me.), *appeal dismissed for want of substantial federal question*, 464 U.S. 963 (1983). The Court should so rule

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[1] Section 6206 (found at Petitioners' Appendix, hereinafter "Pet. App." at 40), provides in relevant part:

> The Passamaquoddy Tribe and the Penobscot Nation, within their respective Indian territories, shall have, exercise and enjoy all the rights, privileges, powers and immunities . . . and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State, provided, however, that internal tribal matters . . . shall not be subject to regulation by the State.

again, and reject the petition for writ of certiorari in this case.

Certain aspects of the factual, procedural, and historical record presented by Petitioners need correction or clarification.

I. THE TRIBES' UNIQUE STATUS

The Law Court's ruling, and interpretation of the Maine Implementing Act, 30 Me. Rev. Stat. Ann. §§ 6201-6214 (West 1996 & Supp. 2000) (hereinafter "MIA"), apply and are relevant solely to Maine Indians, because the status of and rules that apply to these Tribes are unique. *See Penobscot Nation v. Georgia-Pacific Corp.*, 254 F.3d 317, 320 (1st Cir. 2001) (Petitioners' status is "atypical.") The Tribes' own counsel noted: "what we wound up with was a blueprint for a governmental relationship between Indians and non-Indians alike – unlike that which exists anywhere else in the United States." (Testimony of Thomas Tureen, Public Hearing Before the Maine Joint Select Committee on Indian Land Claims, dated Mar. 28, 1980, cited in *Stilphen*, 461 A.2d at 488.)

This unique status is the product of two legislative enactments, one state and one federal (collectively "the Settlement Acts"): MIA; and Congress's ratification of MIA in the Maine Indian Claims Settlement Act of 1980, 25 U.S.C. §§ 1721-1735 (1994) (hereinafter "MICSA"). *See Stilphen*, 461 A.2d at 489 (the Settlement Acts "set up a relationship between the tribes, the State, and the Federal government different from the relationship of Indians in other States to the State and Federal governments.")

The historical backdrop of this legislation and of the relationships between the Tribes and the State of Maine has been exhaustively treated in numerous state and federal cases. *See, e.g., Stilphen*, 461 A.2d at 487-89. The First Circuit has summarized:

> The settlement represented a partial victory for [Petitioners] and Maine: [Petitioners] obtained federal recognition as . . . Indian tribe[s] and

> received . . . $81.5 million appropriated under the Settlement Act (*see* 25 U.S.C. § 1733) and, in exchange, [Petitioners'] claims against Maine were extinguished. Further, while [Petitioners'] right to self-government was preserved to a limited extent, Maine was permitted to extend its jurisdiction over [Petitioners] to a greater degree than most states exercise over other Indian tribes.

Penobscot Nation v. Fellencer, 164 F.3d 706, 708 (1st Cir. 1999).

The general rule in Maine, unlike anywhere else, is, as Section 6206 expressly provides, that the Tribes enjoy the immunities and bear the responsibilities of a municipality, and are subject to state regulation. *See also* 30 Me. Rev. Stat. Ann. § 6204 (contained in the Appendix hereto, or "Resp. App.," at 4) ("Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them . . . shall be subject to the laws of the State . . . ").

The exception to this general rule applies when an "internal tribal matter" is involved, in which case neither the state nor the federal government may intrude (absent Congressional authorization). *See Akins v. Penobscot Nation*, 130 F.3d 482, 485 (1st Cir. 1997) (each tribe "in certain capacities functions as a municipality of Maine and is reachable under State and Federal law in that capacity, but when it functions as a tribe as to internal tribal matters, it is not.")

Views differ over whether the Settlement Acts limited or expanded tribal powers, but "this disagreement stem[s] primarily from . . . differing views as to the extent of the tribes' power before the settlement." *Id.* Whatever

the situation before the Settlement, general judicial consensus exists as to the Tribes' status *after* passage of the Settlement Acts. The First Circuit's view is that the Settlement Acts preserved the Tribes' right to self-government only "to a limited extent." *See Fellencer*, 164 F.3d at 708. The Law Court agrees. (*See* Pet. App. at 18-19.[2])

This "municipal model" of state regulatory authority, with the "internal tribal matter" exception to state and federal authority (*see id.* at 20), is the result of a compromise in the truest sense. Both the First Circuit and the Law Court recognize that the Tribes surrendered their sovereignty except in limited instances, and in return derived substantial benefits. *See Georgia-Pac. Corp.*, 254 F.3d at 320; Pet App. at 15-17; *Stilphen*, 461 A.2d at 488 n.7. Petitioners' revision of this historical backdrop is an attempt to undo the compromise that the Settlement Acts achieved, the benefits of which the Tribes already have received.

II. RESPONDENTS' INTERACTION WITH THE TRIBES LEADING UP TO THE FOAA REQUESTS

Respondents discharge wastewater into rivers in Maine under federal and state discharge licenses. Pursuant to the National Pollutant Discharge Elimination System ("NPDES") program of the federal Clean Water Act, 33 U.S.C. §§ 1251-1387 (West 1986 & Supp. 2000), the State of Maine has applied to the U.S. Environmental Protection Agency ("EPA") to obtain primary authority to issue all NPDES permits in the State of Maine. (*See* Pet. App. at 2.) In response to the State's application, the

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[2] The decision below is set out in full at pages 1-35 of the Appendix to the Petition for Certiorari and is cited herein as "Pet. App.," followed by the Appendix page number.

Tribes asked EPA to conclude that the State is not entitled to regulate water resources within their territories, because, the Tribes said, they are entitled under Section 1377(e) of the Clean Water Act to be treated like a separate "state." (*See id.* at 3.)[3]

Thus, Petitioners appear to be taking the position before the EPA that they – and not the State of Maine – should have regulatory authority over water resources that Petitioners contend are within Indian Territory. This position is directly contrary to the express language of the Settlement Acts. *See, e.g.*, 30 Me. Rev. Stat. Ann. § 6204 (Resp. App. at 4) ("Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them . . . shall be subject to the laws of the State . . . ").

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[3] In their Petition (n.11), the Tribes continue to suggest that this point is factually incorrect. While not relevant to the legal analysis, the limited documents to which Respondents have had access to date indicate the contrary. (*See, e.g.*, Feb. 28, 2000 letter from the Penobscot Nation to EPA (seeking treatment as state ("TAS") status for purposes of grant funding, and asserting that "the Nation has jurisdiction over the resources affected by the program" and that "the Nation has jurisdiction exclusive of the State of Maine over its internal tribal matters"; "As with all land use matters, new construction is within the exclusive jurisdiction of the Nation as an internal tribal matter"); and Sept. 10, 1993 letter from EPA to Penobscot Nation (offering the clarification sought by the Penobscot Nation "as to why this approval of TAS status is limited to the water quality CWA § 106 grant purposes and to the water resources over which the Tribe exercises management and protection functions for purposes of the grant activities"), attached as Exhibits E and F to Respondents' Opposition to Motion For Stay, dated August 15, 2001, before the Superior Court.)

At the same time, on March 9, 2000, counsel for the Companies discovered the existence of Tribal Environmental Agreements ("TEAs") between the Tribes and the EPA, executed between June and October 1999. (*See* Record Item No. 14 before the Maine Supreme Judicial Court, in *Great N. Paper, Inc. v. Penobscot Nation*, Docket No. CUM-00-573, at ¶ 6.) These TEAs provide, among other things, that the EPA will make its best efforts to protect from disclosure all communications that have been exchanged between the EPA, other federal agencies, the Tribes, and the parties' representatives, when such communications are requested under the federal Freedom of Information Act ("FOIA"). (*See id.*, ¶ 4.)

III. RESPONDENTS' FOAA REQUESTS AND THE RESULTING LITIGATION

Faced with the Tribes' efforts to convince the EPA to disregard the terms of the Settlement Acts, along with the EPA's agreement to use its best efforts to conceal any ongoing communications with the Tribes, Respondents served state FOAA requests on the Tribes. Respondents' requests sought "documents relating to the Tribes' efforts to gain regulatory powers over water resources within or adjacent to their borders." (Pet. App. at 3.) Respondents seek to view these documents at the Tribal offices "or other reasonable location." (FOAA Requests, found at Ex. A to Complaint, Record Item 1.)[4]

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[4] FOAA provides that the public shall have the right to inspect records during the regular business hours "of the custodian or location of such record." 1 Me. Rev. Stat. Ann. § 408. Thus, it is the decision of the possessor of the record where to maintain those records and allow inspection. Contrary to the Tribes' claims throughout their Petition, Respondents

"After [the Tribes] received notice from [Respondents] but before [Respondents] could get to state court under the statutorily required waiting period, [the Tribes] filed [a] federal lawsuit against [Respondents] seeking an injunction against any state court lawsuit and a declaratory judgment that the Maine Freedom of Access Act violates 'their federal right to be free of such state regulation.' " *Penobscot Nation v. Georgia-Pac. Corp.*, 106 F. Supp. 2d 81, 82 (D. Me.), *reconsideration denied*, 116 F. Supp. 2d 201 (D. Me. 2000), *aff'd on other grounds*, 254 F.3d 317 (1st Cir. 2001).

Petitioners rejected Respondents' FOAA requests, declaring that no aspect of FOAA applied to them, "because 'the application of that law . . . would amount to state regulation of [the Tribes'] governmental process, policies, and procedures.' " (Pet. App. at 5; ellipsis and

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have never insisted on viewing the documents at their reservations; have said so on frequent occasions (*e.g.*, the FOAA requests themselves, Ex. A to Record Item 1); and would in fact prefer to view them off-site, *e.g.*, in the Tribes' attorneys' offices in Portland.

In a letter dated Oct. 17, 2000, Respondents' counsel wrote: "The Penobscot Nation states that we will not be allowed onto Indian Island to review records. This position is unacceptable and not in compliance with the requirements of the FOAA. The FOAA expressly states that 'every person shall have the right to inspect and copy any public record during the regular business hours of the custodian or location of such record . . . .' " Consistent with the FOAA requests themselves, counsel thus cited the public's right to view documents where the custodian chooses to locate the records – this may or may not be on the Tribes' territories, as they choose. In any event, as discussed *infra*, this point is academic, because the Law Court never ordered any access to tribal lands, but only that the Tribes produce copies of certain documents.

square brackets in original.) The Tribes offered to produce records in their possession that were not confidential under Petitioners' unspecified tribal laws and policies or otherwise protected from disclosure under Maine's discovery and evidentiary rules. (*See id.*)

Because the Tribes thus declined to allow inspection, Respondents, following the procedure set forth in 1 Me. Rev. Stat. Ann. § 409(2), filed a suit in state court to compel production. Shortly thereafter, Respondents filed a motion for partial summary judgment. (Pet. App. at 5.) The purpose of Respondents' motion for partial summary judgment was to resolve the primary basis raised by the Tribes for rejecting the FOAA request: that MIA's "internal tribal matters" exception removed any duty by the Tribes to respond under FOAA. The motion was only for partial summary judgment, because the Tribes had also alluded to an attorney-client privilege/work product claim as to unidentified documents.

The Tribes opposed the motion for partial summary judgment and moved to dismiss the state court action, claiming that the state court lacked subject-matter jurisdiction, and that application of FOAA to them would amount to regulation of "internal tribal matters," in violation of MIA. (*See id.* at 6.)

On September 19, 2000, the Superior Court (Crowley, J.) rejected the Tribes' motions and granted the Companies' motion for partial summary judgment. (*See id.* at 76.) Citing First Circuit decisions such as *Fellencer* and *Akins*, the Superior Court found that the document requests did not intrude upon an "internal tribal matter" within the meaning of MIA, because the subject matter of the requests (water regulation) affected non-tribal members and implicated state authority and interests. (Pet. App. at 75.)

In order to facilitate immediate appeal, Justice Crowley entered an order giving the Tribes two weeks to: (1) produce the documents over which no attorney-client privilege/work product was claimed; and (2) provide a privilege log as to the remaining documents. (*See id.*) The Tribes filed a motion for reconsideration, which Justice Crowley denied on September 27, 2000. (*See* Resp. App. at 17, entry dated Sept. 28, 2000).[5]

The Tribes were equally unsuccessful on the federal front. The United States District Court for the District of Maine (Hornby, C.J.) dismissed that suit for lack of subject matter jurisdiction under the well-pleaded complaint rule. *See Penobscot Nation*, 106 F. Supp. 2d at 86. Once again, the Tribes filed a motion to reconsider, pursuant to which Judge Hornby again found jurisdiction lacking. *See Penobscot Nation v. Georgia-Pacific Corp.*, 106 F. Supp. 2d 81 (D. Me.), *reconsideration denied*, 116 F. Supp. 2d 201 (D. Me. 2000).

IV. PROCEEDINGS SUBSEQUENT TO THE ORDER TO PRODUCE DOCUMENTS

The Tribes did not appeal Justice Crowley's September 19, 2000 order. Nor did they choose to comply with the order. They did not file a privilege log, nor seek any extension of time to do so. They produced no documents. They chose to do nothing, openly defying the Superior Court.

With neither an appeal nor compliance forthcoming from the Tribes, Respondents filed motions for entry of final judgment and for contempt. (*See* Resp. App. at 17,

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[5] A certified copy of the trial court docket was before the Law Court as part of the parties' jointly filed Appendix. A copy of that certified docket is included in the Appendix to this Brief.

entry dated Oct. 10, 2000). After a hearing on October 18, 2000, Justice Crowley granted the motion for final judgment, because the Tribes' failure to respond in any way to the September 19, 2000 order constituted a waiver of any assertion of attorney-client privilege or application of the work product doctrine. (*See* Pet. App. at 6-7.)

The Superior Court did not rule, however, on the motion for contempt. Rather, it continued the action for an evidentiary hearing on November 9, 2000, in order to give the Tribes more time to comply with the order to produce documents or file an appeal of the now final judgment. (*See* Resp. App. at 7, entry dated Oct. 20, 2000.)[6]

The Tribes responded to this allowance of more time to appeal or comply by suing Justice Crowley in federal court. *See Penobscot Nation v. Honorable Robert E. Crowley*, Civil No. 00-222-B-S (D. Me. Oct. 31, 2000). Judge Carter rejected their motion for preliminary injunction; the Tribes withdrew the suit and sought an expedited appeal of Judge Hornby's dismissal. *See id.*, Order dated Nov. 6, 2000 at 2.

In the state court forum, the Tribes continued to defy the Superior Court, neither complying with its order nor appealing from it. This left Justice Crowley with no choice on November 9, 2000 but to find the Tribes in contempt.

Justice Crowley ordered coercive imprisonment of the three tribal leaders named as parties before him and coercive fines against the Tribes themselves. Yet one more time, however, the state court gave the Tribes another chance. Justice Crowley ordered that any fines or

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[6] The filing of an appeal in Maine automatically stays execution of judgment. Maine Rule of Civil Procedure 62(a).

imprisonment would be suspended pending any appeal to the Law Court; as to the individual tribal leaders, he further ordered that the sentences of coercive imprisonment should be stayed until November 13, 2000, to give them another opportunity to appeal or comply. (*See* Resp. App. at 26.)

Finally, on the last available day, November 13, 2000, having delayed proceedings in state court as long as possible without subjecting their leaders to actual imprisonment, all the while accelerating the federal appeal, the Tribes filed their Notice of Appeal of Justice Crowley's final judgment. (*See* Resp. App. at 28-29.)

The Law Court ruled on that appeal on May 1, 2001. (*See* Pet. App. 1-36.) Surveying the legislative history and case law in depth, the Law Court affirmed in part and vacated in part Justice Crowley's order to produce documents, vacated Justice Crowley's contempt order, and remanded to Justice Crowley to resolve any remaining disputes over the scope of the Tribes' obligation to produce documents. (*See id.* at 33-34.)

Both the Superior Court and the Law Court concluded that MIA's "internal tribal matters" exception did not blanketly preclude any application of FOAA. While Justice Crowley had focused primarily on the subject matter of the FOAA request to determine whether the exception was implicated, the Law Court focused on the processes associated with creation of the documents. Documents, such as minutes of tribal meetings, reflect "deliberative processes of self-government," the Law Court reasoned, and, therefore, are excluded from production. In contrast, other documents, such as inter-governmental communications from the Tribes to the EPA, do not form a part of the internal tribal governmental process; therefore, the exception does not apply. (*Id.* at 31-34.)

On May 31, 2001, the Law Court denied the Tribes' request for reconsideration. (*See* Pet. App. at 36.) On June 20, 2001, the First Circuit (Boudin, C.J.) affirmed the dismissal of the Tribes' federal suit, on the grounds that the final judgment in the state court was entitled to full faith and credit in the federal court and would bar the injunctive relief that the Tribes requested in the federal suit. *See Georgia-Pac. Corp.*, 254 F.3d at 325. The First Circuit denied the Tribes' request for rehearing and for rehearing en banc on August 24, 2001. *See Penobscot Nation v. Georgia-Pac. Corp.*, Docket No. 00-2265, orders dated Aug. 24, 2001 (1st Cir.).

The FOAA requests are currently pending before the Maine Superior Court on remand. The Law Court ordered that Petitioners be given a reasonable time to comply with its order of production. Orally, the Superior Court on September 6, 2001 ordered that he would grant a stay of actual production of documents pending resolution of this certiorari petition, while requiring the parties to brief the remand issues clarifying the exact documents to be produced.

Throughout this 19-plus month process, Respondents have consistently sought expedition, since the documents could prove relevant to the EPA's pending NPDES decision, which could issue at any time.

REASONS FOR DENYING THE WRIT

SUMMARY

This case involves the Law Court's determination that, because the Tribes are subject to state laws except as to internal tribal matters, FOAA does not require them to turn over documents that bear on their "deliberative processes of self-government," but does require production

of documents such as those reflecting the Tribes' interaction with state and federal governments in an effort to achieve regulatory authority over natural resources in Maine.

It is equally important to note what this case does not involve: invasion of or unwanted entry upon tribal lands by non-members of the Tribes.

The Tribes seek to make the issue decided below appear to be more substantial than it was in *Stilphen* by creating a false sense of emergency. Specifically, the Tribes misstate the case right at the outset of their petition: "The Maine Supreme Judicial Court has mandated the entry of hostile corporations onto Petitioners' reservations." (Pet. for Cert. at 1.) The Law Court did no such thing. No Maine court has mandated that Respondents be allowed onto Petitioners' lands and, indeed, Respondents have never sought such a mandate. Similarly, the Tribes state that "the Maine Supreme Judicial Court has placed itself in direct conflict with the First Circuit." *Id.* Again, this statement is false. The Law Court (like the lower state court) expressly followed and applied First Circuit law governing the application of the "internal tribal matters exception," as set out in *Akins*. (*See* Pet. App. at 26-27, 74-76.) There is no emergency, and there has been no miscarriage of justice in Maine; the state courts resolved a production dispute in part favorably to the Tribes and in part favorably to Respondents. Review of that resolution is not an appropriate use of this Court's limited certiorari docket.[7]

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[7] A threshold issue is whether this case presents any federal question, given this was a state FOAA action involving interpretation of MIA, another state statute. *Cf. Georgia-Pac. Corp.*, 254 F.3d at 320-21 ("This court has assumed, albeit

I. PETITIONERS MISREPRESENT FACTS THAT ARE ESSENTIAL TO THIS COURT'S READY AND ADEQUATE UNDERSTANDING OF THE POINTS REQUIRING CONSIDERATION, AND THEREFORE THE WRIT SHOULD NOT ISSUE.

"The failure of a petitioner to present with accuracy . . . whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition." Sup. Ct. R. 14.4.

A. PETITIONERS REPEATEDLY MISREPRESENT THE FACT THAT NO COURT HAS ORDERED PETITIONERS TO ALLOW ANY UNWANTED ACCESS TO TRIBAL LANDS, AND THEREFORE THE QUESTIONS PRESENTED FOR REVIEW ARE PURELY ADVISORY.

At the very heart of Petitioner's claim for certiorari is a mischaracterization of the record: "The corporations claim – and the Maine courts have agreed – that they may, on demand, enter the reservations to gather tribal

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without extensive discussion, that the internal affairs limitation on state authority in the Maine Implementing Act is also an overriding *federal* limitation on Maine authority over the Tribes") (emphasis added). One may doubt whether a suit involving construction of a state statute that has been ratified by federal statute fits with the statutory "arising under" jurisdiction of the federal district courts. *See Shoshone Mining Co. v. Rutter*, 177 U.S. 505 (1900). *Cf. Gully v. First National Bank*, 299 U.S. 109, 116 (1936) ("[I]t is unimportant that federal consent is the source of state authority. To reach the underlying law we do not travel back so far. By unimpeachable authority, a suit brought upon a state statute does not arise under an act of Congress or the Constitution of the United States because prohibited thereby. With no greater reason can it be said to arise thereunder because permitted thereby") (citation omitted).

records." (Pet. for Cert. at 5.) But no Maine court has ordered that Respondents may enter upon Petitioners' tribal lands. The state trial court ordered Petitioners "to turn over all non-privileged documents as well as logs of all documents claimed to be privileged." (Pet. App. at 76.) Nothing in the order to "turn over" documents requires Petitioners to allow Respondents onto tribal lands to inspect originals. Any potential ambiguity on this score was removed by the order of the Law Court: "the Superior Court did not err in requiring the Tribes to turn over *copies* of their correspondence or documents exchanged with the State or Federal government that relate to their efforts to obtain federal recognition as a 'state' in water quality matters." (Pet. App. at 32; emphasis added.) Indeed, FOAA itself does not require access to any particular location, and Respondents have no desire to enter any reservation. *See supra* note 5.

Yet the Tribes inaccurately suggest – continually throughout their Petition for Certiorari – that this case involves invasion of tribal lands or the integrity of the Tribes' physical borders. (*See, e.g.*, Pet. for Cert. at 1: "The Maine Supreme Judicial Court has mandated the entry of hostile corporations onto Petitioners' reservations"; 19-20: the Law Court "left the Respondent corporations free to intrude upon the reservations;" 21: "The decisions of the courts below threaten the very existence of the Tribes, as tribes. This is not an exaggeration. Cases involving the rights of Indian tribes to be secure in their territory in the face of state power and local economic interests, are at the core of this Court's Indian law jurisprudence"; 22: "This right [to protect the integrity and order of tribal territory] is at stake here;" 23: "at stake in this case are the basic rights of the Penobscot Nation and

the Passamaquoddy Tribe to maintain . . . the integrity of their reservation boundaries;" 28: the Law Court "entirely failed to even address Petitioners' crucial claim: that control over the terms and conditions under which strangers may enter their reservations . . . is essential to their ability to maintain authority as Indian tribal governments.").

This misrepresentation in itself suffices to deny the writ. The misrepresented fact is essential to the Court's ready and adequate understanding of the points requiring consideration, because the misrepresentation is expressly relied on in framing both of Petitioners' Questions Presented, and because the misrepresentation forms the linchpin of each of the two arguments that the Tribes present as reasons for granting the writ.

1. The Tribes Seek Answers to Advisory Questions.

Petitioners' first question presented for review asks whether "the terms and conditions under which the non-Indian public . . . can gain and enforce entry into the Tribes' reservations" is "immune from state jurisdiction" at least for the purposes of demanding, inspecting, and copying tribal records. (Pet. for Cert. at i.) Similarly, the second question asks whether the Law Court applied the proper law in determining the scope of "the Petitioner Tribes' right to be free from state control over the non-Indian public's intrusion into the reservations," again, at least for the purposes of demanding, inspecting, and copying tribal records. (*Id.*)

Without any such order of entry having been entered below, answers to these questions would be purely advisory. The Tribes have made no attempt to turn over documents without permitting entry, nor has any dispute

arisen regarding any claimed right to enter onto Petitioners' lands. The challenged order simply requires the Tribes to produce copies of documents. Because there is no order for Petitioners to permit entry upon their land to comply with the document requests, the Tribes' questions presented seek an advisory ruling from this Court regarding whether such an order of entry would violate federal law. Nor is this misrepresentation simply colorful talk by an advocate without real bearing on the substantive analysis at issue; it lies at the heart of Petitioners' substantive arguments in support of issuance of the writ.

2. The Tribes' Arguments Hinge Upon A Non-Existent Order to Allow Access to Tribal Lands.

The very first reason Petitioners give for why the writ should issue is that "Cases involving the rights of Indian tribes to be *secure in their territory* . . . are at the core of this Court's Indian law jurisprudence. This is because the right of Indian tribes to control the terms and conditions under which strangers *enter their reservations* to access tribal property . . . is a crucial attribute of their retained sovereignty." (Pet. for Cert. at 21; emphasis added; citations omitted.) Nowhere in Petitioners' first argument for why the writ should issue do they characterize the rights at stake in this case as anything less than the right to exclude nonmembers from entry onto tribal lands.

Petitioners' second argument for why the writ should issue similarly turns on the erroneous contention that they have been ordered to permit unwanted access to tribal lands. To support their request that this Court review whether the Law Court employed the proper legal analysis in applying the FOAA to the Tribes, Petitioners

contend that the Law Court (notwithstanding its statements to the contrary) did not take into account " 'prior legal understandings' in accordance with the First Circuit's approach." (Pet. for Cert. at 28.) How so? Petitioners state that the Law Court "entirely failed to even address" what Petitioners characterize as their "crucial claim." (Pet. for Cert. at 28.) This "crucial claim" – the claim on which so much turns that the Law Court's failure to address it warrants review by this Court – again, involves *not* the right to withhold the copies of documents that the Tribes were ordered to produce, but rather the Tribes' sovereign control of their borders, *i.e.*, their "control over the terms and conditions under which strangers may enter their reservations." *Id.*

In other words, throughout Petitioners' entire argument in support of issuance of the writ, the only reason Petitioners say the writ should issue in this case is to permit this Court to make a declaration concerning rights that are not actually in controversy in this case: namely, their right to exclude unwanted strangers from their tribal lands.

B. PETITIONERS ERRONEOUSLY CLAIM THAT THE DECISION OF THE LAW COURT BELOW CONFLICTS WITH THE LAW AS DEVELOPED BY THE FIRST CIRCUIT.

The legislative history of the Settlement Acts "embodies two conflicting approaches to resolve the question of what is an internal tribal matter. On the one hand, Congress described the settlement as 'original' and 'innovative.' On the other hand, Congress referred to respecting the inherent self-governing authority of a tribe." *Akins*, 130 F.3d at 489. Petitioners contend that the First Circuit holds that this latter strand of Congressional

intent governs interpretation of the internal tribal matters exception, and that it means that the entire federal common law of Indian inherent sovereignty is contained within that exception. The Tribes further contend that the Law Court departed from First Circuit law by not giving due weight to the federal common law of Indian inherent sovereignty. (*See* Pet. for Cert. at 28-29.) That being so, Petitioners claim, had this case been heard in the First Circuit, or had the First Circuit's analysis been properly applied in the Law Court, "the Tribes' interests would, no doubt, [have] prevail[ed]." (*Id.* at 29.) Neither contention is correct.

The Law Court and the First Circuit agree on the significance of federal common law in determining the extent of Petitioners' sovereignty as defined in the Settlement Acts. On the one hand, the "internal tribal matters" exception does not reserve to Petitioners the entire "inherent authority" of Indian tribes under the federal common law. This is the view of the Law Court, *see Stilphen*, 461 A.2d at 488, and the First Circuit, *see Akins*, 130 F.3d at 489 (stating that First Circuit does not read references in legislative history to respecting Tribes' inherent self-governing authority "as invoking all of prior Indian law. That would be inconsistent with the unique nature of the Maine settlement."). On the other hand, federal common law is of *some relevance* in determining the scope of the "internal tribal matters" exception. Again, this is the view of both the First Circuit, *see id.* ("But we also do not agree that reference to [federal common] law is never helpful in defining what is an internal tribal matter"), and the Law Court (*see, e.g., Stilphen*, 461 A.2d at 482-488, analyzing federal common

law in determining whether the state could regulate Tribal beano games).[8]

Petitioners contend, however, that the First Circuit's recent *Fellencer* decision shows that the court's "starting premise is *not* that the Tribes are presumptively subject to state authority 'as municipalities' pursuant to the municipal 'duties and obligations' clause of section 6206(1)." (Pet. for Cert. at 27.) In their view, the First Circuit starts with the premise that state regulatory authority is *not* the general rule (with exemption the exception), and that the Tribes possess all the attributes of inherent tribal sovereignty established in Indian common law. *See id.* This view does not square with what the First Circuit has actually said, both in *Fellencer* and more recently.

The *Fellencer* court reaffirmed the *Akins* principle that the whole of Indian law is not incorporated in the internal tribal matters exception, nor in references in the legislative history to preserving inherent tribal sovereignty. *See Fellencer*, 164 F.3d at 712. More importantly, that court

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[8] Underscoring the unique status of Maine Indians, any applicability of federal common law is further informed by express provisions in MICSA, 25 U.S.C. §§ 1725(h) and 1735(b), which preclude any federal law generally applicable to Indians from applying to the Tribes, if that law accords or relates a special Indian status or right and affects or preempts the State of Maine's regulatory jurisdiction. (Because the Tribes omitted these and other relevant statutory provisions from their Appendix, they are attached hereto at Resp. App. at 1-4.) Hence, while federal common law can properly be cited to limit the scope of MIA's "internal tribal matters" exception, *e.g., Montana v. U.S.*, 450 U.S. 544, 564 (1981), cited in *Akins*, 130 F.3d at 490 (for the proposition that powers of self-government involve only the relations among members of a tribe), it cannot be applied in a way that circumscribes the state's broad regulatory authority over the Tribes.

twice stated expressly that the starting premise is indeed that Tribes are presumptively subject to state authority: the Tribes' right to self-government, said the court, was preserved only "to a limited extent"; the court iterated that "with very limited exceptions, the [Tribes are] subject to the laws of Maine." *Id.* at 708. More recently, the First Circuit has referred to the Tribes' municipal duties and obligations as the "general rule," and the internal tribal matters exception as a mere "qualification." *Georgia-Pac. Corp.*, 254 F.3d at 320.[9] In short, the Tribes attempt to generate an issue worthy of review in this Court based on the false premise that the First Circuit and the Law Court disagree over the so-called "municipal model" of the Tribes' status in Maine and the role to be accorded to federal common law in interpreting the internal tribal matters provision.

Nor is there any reason to think, as the Tribes flatly declare, that this case would have come to a different result in the First Circuit. First, in affirming Chief Judge Hornby's dismissal of the federal preliminary injunction suit, Chief Judge Boudin stated that he did not find anything in the Law Court's analysis "so implausible as to suggest the need for independent federal reexamination." *Georgia-Pac. Corp.*, 254 F.3d at 324. Second, even if the First Circuit had addressed federal Indian common law in more detail than did the Law Court, it would have reached the same result. The First Circuit has pointed out that "[w]here . . . the issue involves tribal attempts to regulate non-tribal members, the Supreme Court has

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[9] This position comports with the language of MIA itself. 30 Me. Rev. Stat. Ann. § 6204 (Resp. App. at 4); § 6206 (Pet. App. at 40.)

often found that those attempts are not within the inherent self-governing powers of a tribe." *Akins*, 130 F.3d 482. Both the Superior Court and Law Court expressly applied the *Akins* court's five-factor test for determining whether the internal tribal matter exception applies. (Pet. App. 27, 74-75.)[10]

In sum, the First Circuit's and Law Court's interpretations of MIA converge; they do not conflict.[11]

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[10] Just as the Maine state courts, as noted, regularly rely upon the First Circuit's MIA decisions, such as *Akins*, so also has the First Circuit cited state MIA decisions, *e.g.*, *Stilphen*. *See Fellencer*, 164 F.3d at 710; *Akins*, 130 F.3d at 483, 487; *U.S. v. Boots*, 80 F.3d 580, 591 (1st Cir. 1996); *Passamaquoddy Tribe v. State of Maine*, 75 F.3d 784, 784 (1st Cir. 1996). *See also Solman Distributors, Inc. v. Brown-Forman*, 888 F.2d 170, 173 (1st Cir. 1989).

[11] Respondents note two points in anticipation of a Tribal reply argument that, if Respondents were so certain of First Circuit and state court confluence of position, Respondents would not have moved to dismiss the Tribes' federal action. First, Respondents had no jurisdictional basis for filing their FOAA claim in federal court. As Chief Judge Hornby held, neither did Petitioners. Respondents had no desire to proceed through the federal system only for an appellate court ultimately to expunge any such decision *sua sponte* when it recognized the applicability of the well-pleaded complaint rule. Second, even if the well-pleaded complaint rule had not applied, and the federal district court could have ruled on the merits, Respondents disagree with the Tribes' apparent premise that the federal forum is the only tribunal capable of interpreting MIA. To the contrary, MIA is a state statute; the primary responsibility for implementing its contents lies with state authorities; and the Law Court has shown its capability of construing the statute not only as reflected in this case, but previously in decisions such as *Stilphen* and *Couturier v. Penobscot Indian Nation*, 544 A.2d 306 (Me. 1988) (holding that immunities bestowed upon Maine governmental entities under

II. THE TRUE QUESTION PRESENTED IN THIS CASE IS WHETHER THE LAW COURT PROPERLY APPLIED MIA'S INTERNAL TRIBAL MATTERS EXCEPTION TO DEFINE THE SCOPE OF PETITIONERS' PRODUCTION OBLIGATIONS UNDER FOAA, AND THAT QUESTION DOES NOT WARRANT SUPREME COURT REVIEW.

"A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." Sup. Ct. R. 10. The true question presented in this case concerns the Law Court's application of the properly stated law regarding MIA's "internal tribal matter" exception. As in *Stilphen*, 464 U.S. 963, this Court's review of the Law Court's application of that properly stated rule of law is sought; once again, it should be denied.

Both the Superior Court and the Law Court held that the Tribes must produce copies of the requested documents that do not relate to internal tribal matters. By ordering disclosure of certain documents connected with the deliberative processes of self-government (like minutes of tribal meetings), the Superior Court implicitly held that such documents do not automatically fall within the internal tribal matters exception; specifically, that court held that minutes dealing with the Tribes' efforts to regulate natural resources must be produced, because regulation of natural resources is not itself an internal tribal matter. (*See* Pet. App. at 73-74.) The Law Court adjusted this holding: some documents relating to the Tribes' efforts to regulate natural resources, the court

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the Maine Tort Claims Act apply to the Penobscot Nation when acting in a governmental capacity).

held, do relate to internal tribal matters and are protected from disclosure (*see* Pet. App. at 27-28), while other such documents do not relate to internal tribal matters and must be produced under FOAA (*see* Pet. App. at 29-30).

In other words, the state courts engaged in the essential judicial function of line drawing, trying to determine which applications of FOAA to the Tribes constitute regulation of internal tribal matters by state law, and which do not. The two courts drew the line in slightly different places, with both analyzing the question by, among other things, applying the same five-factor test proposed by the First Circuit in *Akins*.

The sole question, apparently, that the Tribes wish to present here is whether the Law Court's holding is wrong because *any* application of FOAA to the Tribes would violate MIA. (*See* Pet. for Cert. at 24 n.14: "The issue presented by this Petition has nothing to do with what *particular documents* may or may not be privileged from disclosure to the public, whether under FOIA or the MAA. This Petition presents the issue of the Tribes' right to control entry by the general public onto their reservations and into the files of tribal offices, well inside those reservations, *regardless of the particular subject matter such strangers may wish to access*") (emphasis in original).[12] But

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[12] The Tribes must contend that the question presented has nothing to do with the particular content of the documents ordered produced, because certiorari certainly would not be warranted to review the Law Court's determination that documents reflecting external communications, such as interaction with other governments in an effort to obtain regulatory authority over natural resources in Maine, is not an internal tribal matter. First, that determination is the classic kind of application of law to fact that does not warrant certiorari review. *See* Sup. Ct. R. 10. Second, the statutory language and

in defense of that proposition, the Tribes apparently are prepared to offer only arguments that the most intrusive applications of FOAA – applications that the Law Court specifically did *not* order – would violate MIA.

The Petition for Certiorari does not show that the Tribes are prepared to discuss, nor wish to present any argument regarding, the limited application of FOAA to the Tribes that the Law Court did order. It is not at all clear that the Tribes wish to argue to this Court that the document production ordered here, *without any requirement that the Tribes grant physical access to tribal lands,* violates MIA because *any* requirement that the Tribes produce documents in their governmental capacity violates MIA. If the Tribes were seeking to present such an argument, it would fail.

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prior First Circuit case law clearly establish that the subject matter of these requests – natural resource regulation – is not an internal tribal matter. Under MIA, the natural resources owned by the Maine Indians or held in trust for them expressly are subject to the laws of Maine. *See* 30 Me. Rev. Stat. Ann. § 6204 (Resp. App. at 4.) Applying this law, the First Circuit expressly limited its holding in *Akins* (that the issuance of stumpage permits is an internal tribal matter) on the grounds that "the subject matter . . . appears to have no bearing on Maine's environmental . . . interests." 130 F.3d at 488. Where, as here, the matter involved is the Tribes' attempt to exercise authority directly over Maine's environmental resources and obtain environmental regulatory authority that otherwise would belong to Maine, the matter cannot seriously be said to be one internal to the Tribes.

A. THE TRIBES' CONTENTION THAT ANY APPLICATION OF FOAA TO THEM REGULATES AN INTERNAL TRIBAL MATTER IS NOT PERSUASIVE AND IS NOT FRAMED IN TERMS APPLICABLE TO THIS CASE.

The Tribes must be arguing that any requirement that they produce documents, without regard to the content of those documents, constitutes regulation of an internal tribal matter, because such a production requirement regulates how the Tribes conduct "tribal government." (*See* Pet. for Cert. at 22-23, 24 n.14.) Neither of the arguments apparently offered in support of this view is persuasive.

First, the Tribes claim that the requirement to produce any document regulates an internal tribal matter because it subjects the Tribes to public policy determinations that are those of the State, not the Tribes. Application of FOAA to the Tribes, they say, "force[s] the Tribes to submit to the public access procedures, policies, and values of the State of Maine, which are far removed from those of these tribal communities." (Pet. for Cert. at 22-23.) This argument, however, proves too much. *Every subjection of the Tribes to state law* forces them to submit to the procedures, policies, and values of the State of Maine. Yet one fundamental point underscored in MIA is the Tribes' general subjection to state law. *See* 30 Me. Rev. Stat. Ann. §§ 6204, 6206.

Second, the hook upon which the Tribes attempt to segregate FOAA from the general category of state regulations applicable to them is protection of tribal borders: "The terms and conditions for the general public's entry onto the reservations, what the public may inspect once inside, and where and how the public may enforce its

'rights' of such access are intimate matters of self-government." (*Id.* at 23.) Such access, however, is not implicated by the challenged decision.

B. THE QUESTION WHETHER APPLICATION OF FOAA TO THE TRIBES IN THIS CASE REGULATES ANY INTERNAL TRIBAL MATTER CANNOT BE DIVORCED FROM THE SUBJECT MATTER OF THE DOCUMENTS ORDERED PRODUCED.

Logically, whether production of a document involves an internal tribal matter depends upon the content of the document. If the subject matter of the document were an internal tribal matter – a rite, an election, and so forth – then a persuasive argument might be made that those documents would be off-limits under MIA.

But that is not the case here. Here, the subject matter of the documents – water regulation – is without question not an internal tribal matter, and the Tribes do not even argue otherwise. Rather, their position is that subject matter is irrelevant.

C. EVEN IF THE TRIBES PROPERLY FRAMED THE GENERAL QUESTION WHETHER SUBJECTING THEM TO THE FOAA IN EVERY CASE REGULATES AN INTERNAL TRIBAL MATTER, CERTIORARI WOULD NOT BE APPROPRIATE.

The final theoretical question is whether there is anything besides content that could make this particular production requirement a regulation of an internal tribal matter. The fact that the Tribes themselves do not directly tackle this argument predicts the answer.

As a threshold matter, as discussed *supra*, the Settlement Acts are unique in American law; the relationship

between the Tribes and the State of Maine is unlike the relationship between any other Indians and any other state in the United States. Accordingly, resolution of questions regarding application of the Settlement Acts is of interest only to the Indians and other residents of Maine; the Court is not being asked to resolve any question of broader applicability. Where, as here, the state and federal courts that regularly deal with the Settlement Acts are in substantial agreement over how those laws should be interpreted and applied, this Court's assistance is not called for.

Second, and in any event, it is clear MIA does not exempt the Tribes from any and all document requests under FOAA. MIA provides in relevant part:

> Except as otherwise provided in this Act, the Passamaquoddy Tribe and the Penobscot Nation, within their respective Indian territories, shall have, exercise and enjoy all the rights, privileges, powers and immunities . . . and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State, provided, however, that internal tribal matters, *including membership in the respective tribe or nation, the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections and the use or disposition of settlement fund income* shall not be subject to regulation by the state.

30 Me. Rev. Stat. Ann. § 6206(1) (emphasis added).

The only way the Law Court's decision could be challenged would be if one interpreted the term "tribal government" within the list of statutory examples of types of internal tribal matters inconsistently with the surrounding examples, to mean *anything* that the Tribes do *qua* governments. Both the First Circuit and state courts have consistently rejected this interpretation. It

would not only ignore the plain language of the Settlement Acts, all relevant legislative history, and the context in which the Acts were enacted, but would simply swallow the general rule. If "tribal government" meant anything the government did, or any document it created, then the result would be that *no* state regulation would apply to the Tribes.

The First Circuit has specifically noted: "That a tribe attempts to govern a matter does *not* render it an internal tribal matter." *Akins*, 130 F.3d at 486 (emphasis added). Raising revenue is an exercise of tribal government, but that does not prevent the State from regulating revenue-raising beano games. *See Stilphen*, 461 A.2d at 489-90. Similarly, just because Petitioners possess documents in their governmental capacities does not mean that a production requirement – for documents on a subject unrelated to an internal tribal matter – regulates "tribal government" as a subset of an "internal tribal matter."

The abstract generality of the rule that the Tribes must be proposing leads to absurd results. For example, although the State of Maine has exclusive jurisdiction over violations of tribal ordinances by nonmembers of the Tribes, *see* 30 Me. Rev. Stat. Ann. § 6206(3), the Tribes' argument leads to the conclusion that the State cannot force the Tribes – through FOAA or any other law – to produce copies of their ordinances to the non-Indian public. Similarly, even though the Tribes can be sued for, *e.g.*, breach of contract, *e.g.*, *Forrest Associates v. Passamaquoddy Tribe*, 760 A.2d 1041 (Me. 2000), under the Tribes' interpretation, they would have no duty to respond to any discovery request.

In sum, the Tribes' request for review is based on two false premises: (1) the Law Court ordered access to tribal land; and (2) federal and state decisions interpreting

MIA's "internal tribal matters" exception conflict. Stripped of these inaccuracies, the request is reduced to the apparent claim that requiring the Tribes to produce any document whatsoever, even on subjects that are admittedly not internal to the tribe, and do not reflect any deliberative self-government process, somehow violates federal law. As demonstrated above, it does not.

CONCLUSION

For all the foregoing reasons, the Petition for Certiorari should be denied.

Respectfully submitted,

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APPENDIX

TABLE OF CONTENTS

Relevant Statutes Involved in the Case Omitted from Petitioners' Appendix

25 U.S.C. § 1725(d)(1), (e)(1), (f),(g),(h) .....App. 1

25 U.S.C. § 1735(b) .....App. 3

30 Me. Rev. Stat. Ann. § 6204.....App. 4

Additional Record Excerpts Relevant to Understanding the Petition

Docket entries before the Superior Court, *Great Northern Paper Inc. v. Penobscot Nation,* Docket No. CV-00-329.....App. 5

UNITED STATES CODE
TITLE 25. INDIANS
CHAPTER 19 – INDIAN LAND CLAIMS SETTLEMENTS
SUBCHAPTER II –
MAINE INDIAN CLAIMS SETTLEMENT

§ 1725. State laws applicable

. . . .

(d) Capacity to sue and be sued in State of Maine and Federal courts; section 1362 of Title 28 applicable to civil actions; immunity from suits provided in Maine Implementing Act; assignment of quarterly income payments from settlement fund to judgment creditors for satisfaction of judgments

(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and all members thereof, and all other Indians, Indian nations, or tribes or bands of Indians in the State of Maine may sue and be sued in the courts of the State of Maine and the United States to the same extent as any other entity or person residing in the State of Maine may sue and be sued in those courts; and section 1362 of Title 28 shall be applicable to civil actions brought by the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians: Provided, however, That the Passamaquoddy Tribe, the Penobscot Nation, and their officers and employees shall be immune from suit to the extent provided in the Maine Implementing Act. . . .

(e) Federal consent for amendment of Maine Implementing Act; nature and scope of amendments; agreement respecting State jurisdiction over Houlton Band Lands

(1) The consent of the United States is hereby given to the State of Maine to amend the Maine Implementing Act with respect to either the Passamaquoddy Tribe or the Penobscot Nation: Provided, That such amendment is made with the agreement of the affected tribe or nation, and that such amendment relates to (A) the enforcement or application of civil, criminal, or regulatory laws of the Passamaquoddy Tribe, the Penobscot Nation, and the State within their respective jurisdictions; (B) the allocation or determination of governmental responsibility of the State and the tribe or nation over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the tribe or nation; or (C) the allocation of jurisdiction between tribal courts and State courts.

. . . .

(f) Indian jurisdiction separate and distinct from State civil and criminal jurisdiction

The Passamaquoddy Tribe and the Penobscot Nation are hereby authorized to exercise jurisdiction, separate and distinct from the civil and criminal jurisdiction of the State of Maine, to the extent authorized by the Maine Implementing Act, and any subsequent amendments thereto.

(g) Full faith and credit

The Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other.

(h) General laws and regulations affecting Indians applicable, but special laws and regulations inapplicable, in State of Maine

Except as other wise provided in this subchapter, the laws and regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations, or tribes or bands of Indians shall be applicable in the State of Maine, except that no law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State. . . .

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§ 1735. Construction

. . . .

(b) General legislation

The provisions of any Federal law enacted after October 10, 1980, for the benefit of Indians, Indian nations, or

tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this subchapter and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.

MAINE REVISED STATUTES ANNOTATED
TITLE 30. MUNICIPALITIES AND COUNTIES
PART 4. INDIAN TERRITORIES
CHAPTER 601. MAINE INDIAN CLAIMS SETTLEMENT

§ 6204. Laws of the State to apply to Indian Lands

Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein.

Cumberland County

Date Filed 05/22/00 Docket No. CV-00-329

Action FREEDOM OF ACCESS

GREAT NORTHERN PAPER, INC.
CHAMPION INTERNATIONAL CORPORATION
GEORGIA-PACIFIC CORPORATION

PENOBSCOT INDIAN NATION
RICHARD H. HAMILTON, CHIEF
THE PASSAMAQUODDY TRIBE
RICHARD M. DOYLE, GOVENOR [sic]
STATE OF MAINE
(Intervenor)

vs.

Plaintiff's Attorney	Defendant's Attorney
CATHERINE R. CONNORS ESQ MATTHEW MANAHAN, ESQ 791-1100 ONE MONUMENT SAUARE [sic] PM 04101	722-1941 GREGORY SAMPLE ESQ (Passamaquoddy) 245 Commercial St. PM 04101 KAIGHN SMITH JR ESQ (Penobscot) Box 9781, Por. Me 04191-5083 MARK A CHAVAREE ESQ 6 River Rd., Indian Isalnd [sic], Old Town, Me 04468 WILLIAM STOKES, AAG (STATE) 626-8800 6 STATE HOUSE STATION AUGUSTA, MAINE 04333-0006

Date of Entry 2000	
May 23	Received 05/22/00:
	Complaint Summary Sheet filed.
" "	Complaint Under Maine's Freedom of Access Act with Exhibits A and B filed.
May 31	Received 05/31/00:
	"Summons filed showing officer's return of service on 5/25/00 upon Richard H. Hamilton, Chief Penobscot Indian Nation.
" "	"Summons filed showing officer's return of service on 5/25/00 upon Penobscot Indian Naiton [sic] Richard H. Hamilton, Chief to Linda Socoby, clerk.
" "	"Summons filed showing officer's return of service on 5/26/00 upon The Passamaquoddy Tribe Richard M. Doyle, Governor Richard Stevens, Governor to Mary Lola clerk.
" "	"Summons filed showing officer's return of service on 5/26/00 upon the Passamaquoddy Tribe Richard M. Doyle, Governor to Mary Lola, clerk.
" "	"Summons filed showing officer's return of service on 5/26/00 upon the Passamaquoddy Tribe Richard Stevens, Governor to Mary Lola, clerk.
" "	"Summons filed showing officer's return of service on 5/26/00 upon Richard Stevens, Governor The Passamaquoddy Tribe to mary [sic] Lola, clerk

" "	"Summons filed showing officer's return of service on 5/26/00 upon Richard M. Doyle, Governor The Passamaquoddy Tribe to Mary Lola, Clerk.
June 13	Received 06-09-00:
	Defendants, the Penobscot Indian Nation, Richard H. Hamilton, Chief of the Penobscot Indian Nation, the Passamaquoddy Tribe, Richard M. Doyle, Governor of Pleasant Point Passamaquoddy Reservation, and Richard Stevens, Governor of Indian Township Passamaquoddy Reservation Answer and Affirmative Defenses filed.
June 13	Received 06/12/00:
	Plaintiff's Motion for Partial Summary Judgment filed.
" " " "	Memorandum of law in Support of Plaintiff's Motion for Partial Summary Judgment filed.
" " " "	Statement of Material Facts in Support of Plaintiff's Motion for Partial Summary Judgment filed.
June 13	Received 06/12/00:
	Affidavit of Matthew D. Manahan in Support of Plaintiff's Motion for Partial Summary Judgment with exhibits A-K filed.
" " " "	Plaintiff's Motion for Expedited Hearing and Incorporated Memorandum of Law filed.
" " " "	Plaintiff's Request for a Hearing on Motion for Partial Summary Judgment filed.
" " " "	Defendant's Motion to Stay Proceedings with Incorporated Memorandum of Law with exhibit A-D filed.

" " " "	Request for a Hearing on Motion to Stay Proceedings filed.
" " " "	Defendant's Motion for Expedited Hearing on Their Motion to Stay Proceedings with Incorporated Memorandum of Law filed.
" " " "	Request for a Hearing on Motion for Expedited Hearing on Motion to Stay Proceedings filed.
June 14	Received 06/14/00:
	State of Maine's Motion to Intervene Pursuant to M.R.Civ.P.24(a) and (b) filed.
" "	Memorandum in Support of State of Maine's Motion to Intervene Pursuant to M.R.Civ.P. 24(a) and (b) filed.
" "	Intervenor State of Maine's Answer filed.
June 14	On 06/14/00:
	As to Plaintiff's Motion for Expedited Hearing on Motion for Partial Summary Judgment, Motion maybe scheduled for hearing after 25 days from filing or after responsive pleading filed. (Crowley, J.)
" "	As to Defendant's Motion for Expedited Hearing on Their Motion to Stay Proceedings, Motion may be scheduled for hearing after 25 days from filing or after responsive pleading filed. (Crowley, J.)
" "	On 06/14/00: Copies mailed to Kaighn Smith, Matthew Manahan, Gregory Sample, Esqs. and William Stokes, AAG. and Mark Chavaree, Esq.
June 21	Received 6-21-00.
	Defendants' motion to extend due date for defendants' opposition to plaintiff's motion for

partial summary judgment to allow disposition of defendants' pending motion to stay proceedings (memorandum of law incorporated) with exhibits A, B & 1 filed.

June 22 Received 6-21-00.

Plaintiff's memorandum of law in opposition to defendants' motion to extend due date filed.

" " Plaintiff's memorandum of law in opposition to defendant's motion to stay with exhibits A & B filed.

" " Letter from Matthew D. Manahan Esq. regarding pending motions filed.

June 26 Received 6-26-00.

State of Maine's Memorandum of Law in Opposition to Defendants' Motion to Stay, filed.

June 28 Received 6-28-00.

Defendants' motion to strike State of Maine's memorandum of law in opposition to defendants' motion to stay (memorandum incorporated) filed.

"""" Defendant's request for hering [sic] filed.

June 29 Received 6-28-00.

Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Strike, filed.

June 30 Received 6-29-00.

Defendants' Reply to Plaintiffs' Memorandum of law in Opposition to Defendants' Motion to Strike, filed.

" " Received 6-30-00.

Defendants Penobscot Indian Nation's and Passamaquoddy Tribe's Reply to Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Stay with attached exhibits 1 & 2, filed.

" " Defendants Penobscot Indian Nation's and Passamaquoddy Tribe's Motion for Two-Day Extension to File Their Reply to Plaintiffs' Opposition to Defendants' Motion to Stay Proceedings (Memorandum Incorporated), filed.

" " Request for Hearing, filed.

July 3 Received 06-30-00:

Applicant for Intervention, State of Maine's Opposition to Defendant's Motion to Strike the State's Memorandum of law in Opposition to Defendants' Motion to Stay filed.

" " Applicant for Intervention, State of Maine's Memorandum of Law in opposition to Defendants' Motion to Extend Due Date filed.

July 5 Received 7-3-00.

State of Maine's memorandum of law in support of plaintiffs' motion for for [sic] partial summary judgment filed.

July 5 Received 07/03/00:

Defendant's Motion to Dismiss filed.

" " " " Defendants' Memorandum of law in Opposition to State of Maine's Motion to Intervene filed.

" " " " Defendants' Consolidated Memorandum of Law in Opposition to Plaintiffs' Motion for Partial Summary Judgment, and in Support of

Defendants' Motion to Dismiss with exhibits 1&2 filed.

" " " " Request for a Hearing on Motion to Dismiss filed.

July 6 Received 07/06/00:

Defendants' Motion to Strike State of Maine's Memorandum of Law in Support of Plaintiffs' Motion for Partial Summary Judgment (Memorandum Incorporated) filed.

" " " " Request for a Hearing on Defendants' Motion to Strike State of Maine's Memorandum of Law in Support of Plaintiffs' Motion for Partial Summary Judgment filed.

" " Received 7-5-00.

Plaintiff's memorandum of law in opposition to defendants' motion for a two-day extension with exhibits A & B filed.

"" Received 7-6-00.

Plaintiffs' reply memorandum in support of plaintiffs' motion for partial summary judgment with exhibits A & B filed.

July 10 On 7-7-00.

Conference held in chambers with counsel present.

As to Defendant's Motion for Expedited Hearing on Their Motion to Stay Proceedings:

Motion for expedited hearing denied. (Crowley, J.)

July 10 On 7-7-00 continued.

As to Plaintiffs' Motion for Expedited Hearing:

Motion for expedited hearing denied. (Crowley, J.)

All other motions to be heard in normal course.

Crowley, J. Presiding; no court reporter.

Copies mailed Catherine Connors, Esq., Matthew Manahan, Esq., Gregory Sample, Esq., Kaighn Smith, Esq., Mark Chavaree, Esq. and William Stokes, AAG on 7-10-00.

"" Received 7-10-00.

Intervenor, State of Maine, Reply Memorandum in Support of Its Motion to Intervene filed.

July 11 Received 7-10-00.

Plaintiff's memorandum of law in opposition to defendants' motion to strike filed.

July 13 Received 7-12-00

Defendant's reply to plaintiff's opposition to defendants' motion for two day extension to file reply to defendants' opposition to motion to stay filed.

"""" Letter from Matthew Manahan Esq. reguarding [sic] a scheduling conference filed.

July 14 Received 7-14-00

State of Maine's opposition to defendants' motion to strike state of Maines memorandum in support of plaintiff's motion for partial summary judgement with exhibit A filed.

State of Maine's memorandum of law in opposition to defendants' motion to dismiss with exihibit [sic] a filed.

July 18 Received 7-17-00.

Plaintiff's memorandum of law in opposition to defenants' [sic] motion to dismiss with exhibit A filed.

July 21 Received 7-20-00.

Correspondence from Matthew Manahan, Esq. with attached copy of Federal Court decision requesting that Plaintiff's Motion for Partial Summary Judgment as soon as possible, filed.

July 25 Received 7-25-00

Defendant's Reply to plaintiff's memorandum of law in opposition to defendant's motion to dismiss filed.

July 27 Received 7-26-00.

Scheduling Order, filed. (Crowley, J.)

Scheduling Order filed. Discovery deadline is March 26, 2001. Copies mailed Matthew Manahan, Esq., Gregory Sample, Esq., Kaighn Smith, Esq., Mark Chavaree, Esq. and William Stokes, AAG on 7-27-00.

July 28 Received 7-27-00.

Letter from Matthew D. Manahan Esq. regarding motion to dismiss filed.

Aug. 08 Received 08/07/00:

Plaintiff's Motion to Amend or Alter Scheduling Order and Incorporated Memorandum of Law filed.

" " " " Request for a Hearing filed.

Aug. 08 Received 08/07/00:

Defendant's Objection to Scheduling Order with exhibits A & B filed.

Aug. 9 Received 08-09-00:

Letter from William R. Stokes, AAG stating the State supports the Plaintiffs' Motion to Alter or Amend the Scheduling Order dated July 26, 2000 filed.

Aug. 11 Received 08-11-00:

Letter from William R. Stokes, Assistant Attorney General supports the Defendants' objection to the Scheduling Order filed.

Aug. 14 Received 08-11-00:

Plaintiffs' Memorandum in Response to Defendants' Objection to Scheduling Order with Exhibits 1a thru d, 2a thru c, 3a thru d, 4, 5, 6, 7a thru e, 8, 9, 10, 11 filed.

" " Amended Scheduling Order filed.

Aug. 29 Received 8-28-00.

Defendants' opposition to plaintiff's motion to amend or alter scheduling order with exhibits A-C filed.

Aug. 31 Received 08/31/00:

Plaintiff's Reply Memorandum in Support of their Motion to Amend or Alter scheduling Order filed.

Sept. 7 Received 09-07-00:

Letter Kaighn Smith, Jr., Esq. informing the Court that the United States District Court for

the District of Maine in the matter of Penobscot Nation, et al v. Georgia-Pacific, et al Civil Action no 00-101-B, has scheduled oral argument on the Tribes' Motion for Reconsideration for September 13, 2000 filed.

Sept. 13 On 9-6-00.

Hearing held on Plaintiff's Motion for Partial Summary judgment, Defendant's Motion to Stay Proceedings, State's Motion to Intervene, Defendants' Motion to Strike State of Maine, Defendants' Motion to Dismiss, Defendants' Motion to Strike and Plaintiff's Motion to Amend or Alter Scheduling Order.

As to Plaintiff's Motion for Partial Summary Judgment:

Court takes matter under advisement. (Crowley, J.)

As to Defendants' Motion to Stay Proceedings:

Court takes matter under advisement. (Crowley, J.)

As to State's Motion to Intervene:

Court grants motion prior to hearing. (Crowley, J.)

As to Defendants' Motion to Strike State of Maine:

Motion moot pursuant to court's granting of Motion to Intervene.

As to Defendants' Motion to Dismiss:

Court takes matter under advisement. (Crowley, J.)

As to Defendants' Motion to Strike:

Motion moot pursuant to the court's granting of Motion to Intervene.

As to Plaintiff's Motion to Amend or Alter Scheduling Order:

Court takes matter under advisement. (Crowley, J.)

Crowley, J. Presiding, no court reporter, Matthew Manahan, Esq. for Plaintiff

Kaighn Smith, Esq. for Defendants and William Stokes, AAG for Intervenor State of Maine

Sept. 21 Received 9-19-00.

Decision and Order, filed. (Crowley, J.)

Plaintiff's Motion for Partial Summary Judgment is GRANTED.

Defendant's Motion to Dismiss is DENIED.

Sept. 21 Received 9-19-00 continued.

Defendant's Motion to Stay Proceedings is DISMISSED as MOOT.

Plaintiff's Motion to Amend or Alter Scheduling Order is GRANTED insofar as the Defendants are required to turn over all non-privileged documents claimed to be privileged not later than 14 days from the date of this order.

Copies mailed Catherine Connors, Esq., Matthew Manahan, Esq., Gregory Sample, Esq., Kaighn Smith, Esq., Mark Chavaree, Esq. and William Stokes, Esq. on 9-21-00.

Sept. 26	Received 9-26-00.
	Defendants' Motion for Relief from Decision and Order (Memorandum Incorporated), filed.
" "	Proposed Order, filed.
" "	Defendants' Motion for Expedited Disposition Without Hearing or for Expedited Hearing (Memorandum Incorporated), filed.
" "	Proposed Order, filed.
Sept. 28	On 9-27-00.
	As to Defendants' Motion for Relief from Decision and Order:
	Motion denied without hearing. (Crowley, J.)
	Copies mailed Catherine Connors, Esq., Matthew Manahan, Esq., Gregory Sample, Esq., Kaighn Smith, Esq., Mark Chavaree, Esq. and William Stokes, AAG on 9-28-00.
Oct. 2	Received 9-28-00.
	Plaitniff's [sic] opposition to defendant's motion for relief from decision and order and opposition to motion for expedited disposition without hearing or for expedited hearing with appendix 1 filed.
" "	Received 10-2-00
	Intervenor, State of Maine's, Opposition to Defendants' Motion for Relief from Decision and Order filed.
Oct. 10	Received 10-5-00.
	Plaintiff's Motion for Contempt and Entry of Final Judgment with Incorporated Memorandum of Law, filed.

" "	Affidavit of Matthew D. Manahan in Support of Plaintiff's Motion for Contempt and Entry of Final Judgment with attachment, filed.
" "	Request for Hearing, filed.
" "	Plaintiff's Motion for Expedited Hearing and Incorporated Memorandum of Law, filed.
" "	Proposed Order, filed.
Oct. 12	On 10-10-00. As to Plaintiffs' Motion for Expedited Hearing: Motion for Expedited Hearing granted. Hearing on Motion for Contempt and Entry of Final Judgment is set for October 18, 2000 at 9:00 a.m. Written opposition is to be filed by 4:15 p.m. on October 16, 2000. Copies mailed Cahterine [sic] Connors, Esq., Matthew Manahan, Esq., Gregory Sample, Esq., Kaighn Smith, Esq., Mark Chavaree, Esq. and William Stokes, AAg on 10-12-00.
Oct. 13	Received 10-13-00. Intervenor State of Maine's Position with Respect to Plaintiffs' Motion for Contempt and Entry of Final Judgment filed.
Oct. 17	Received 10-16-00. Defendants' Memorandum in Opposition to Motion for Contempt, Final Judgment and Expedited Hearing with exhibits A and B filed.
" "	Received 10-17-00. Plaintiff's Reply Memorandum in Support of Plaintiffs' Motion for Contempt and Entry of Final Judgment with attachment filed.

Oct. 20 On 10-18-00.

Hearing held on Plaintiff's Motion for Contempt and Entry of Final Judgment. Court grants motion for final judgment; no ruling made on motion for contempt. Hearing on motion for contempt scheduled for 11-9-00 at 9:00 a.m. in Androscoggin Superior Court. Proposed Order to be filed by Attorney Manahan. If an appeal is filed by November 9, 2000, hearing on motion for contempt will be stayed.

Crowley, J. Presiding, Kathy Casey court reporter, Matthew Manahan, Esq. for Plaintiff, Kaighn Smith, Esq. and Gregory Sample, Esq. for Defendants and William Stokes, AAG for Intervenor.

" " Received 10-18-00

Order Directing Entry of Final Judgment, filed. (Crowley, J.)

> On September 19, 2000, the Court granted the Plaintiffs' Motion for Partial Summary Judgment, and ordered the Defendants to turn over all non-privileged documents as well as logs of all documents claimed to be privileged by no later than October 3, 2000. Upon motion by the Plaintiffs and after hearing, the Court finds that by failing to turn over a log of any documents claimed to be privileged by that date, Defendants have waived their argument that any responsive records are privilege [sic] from disclosure. Therefore, given that there is nothing further for this court to do to resolve Plaintiffs' claims in

this case, the clerk is directed to enter final judgment in favor of Plaintiffs.

Copies mailed Catherine Connors, Esq., Matthew Manahan, Esq., Gregory Sample, Esq., Kaighn Smith, Esq., Mark A. Chavaree, Esq. and William Stokes, AAG on 10-20-00.

" " Received on 10-20-00.

Order on Plaintiffs' Motion for Contempt filed. (Crowley, J.)

On September 19, 2000, the Court granted the Plaintiffs' Motion for Partial Summary Judgment, and ordered the Defendants to turn over all non-privileged documents as well as logs of all documents claimed to be privileged by no later than October 3, 2000. Plaintiffs have moved pursuant to M.R.Civ.P. 66(d), to hold the Defendants in contempt of court for failing to turn over responsive documents. The Court hereby scheduled an evidentiary hearing on the motion for contempt for November 9, 2000 at 9:00 a.m., in the Androscoggin County Superior Court, provided, however, that the Plaintiffs' Motion for Contempt shall be stayed if the Defendants appeal this Court's September 19, 2000 Order and Order Directing Entry of Final Judgment, signed today, to the Law Court before November 9, 2000.

Copies mailed Catherine Connors, Esq., Matthew Manahan, Esq., Gregory Sample Esq., Kaighn Smith, Esq., Mark Chavaree, Esq. and William Stokes, AAG on 10-20-00. Copy also

mailed Linda Mason, Clerk, Androscoggin Superior Court.

Oct. 25 Received 10-24-00.

Transcript of hearing held on 9-18-00 before Justice Crowley, filed.

Nov. 6 Received 11-06-00

Subpoena for hearing on motion of contempt showing officer's return of service on 10-25-00 Upon Richard Doyle. filed.

" " Subpoena for hearing on motion of contempt showing officer's return of service on 10-26-00 Upon Richard Stevens filed.

" " Subpoena for hearing on motion of contempt showing officer's return of service on 10-25-00 Upon Mary Lola filed.

" " Subpoena for hearing on motion of contempt showing officer's return of service on 10-25-00 Upon Mary Lola on behalf of Richard Doyle filed.

" " Subpoena for hearing on motion of contempt showing officer's return of service on 10-25-00 Upon Mary Lola on behalf of Richard Stevens filed.

" " Subpoena for hearing on motion of contempt showing officer's return of service on 10-25-00 Upon Barry Dana (Chief) filed

" " Subpoena for hearing on motion of contempt showing officer's return of service on 10-25-00 Upon Linda Socoby filed.

" " Subpoena for hearing on motion of contempt showing officer's return of service on

10-25-00 Upon Linda Socoby on behalf of Barry Dana, filed,

Nov. 07 Received 11/06/00:

Defendnats [sic] Penobscot Nation, Passamaquoddy Tribe, Richard Hamilton, Richard Doyle and Richard Stevens Motion to Quash Contempt Subpoenas with incorporated Memorandum of Law filed.

" " Defendants' Answer and Objection to Plaintiffs' Motion for Contempt filed.

" " Received 11/06/00:

Plaintiff's Motion for Appointment pursuant to Rule 70, with incorporated Memorandum of Law filed.

Plaintiff's Request for Hearing filed.

Plaintiffs' Motion for Expedited Hearing on Plaintiffs' Motion for Enforcement of Judgment with incorporated memorandum of Law filed.

Nov. 7 Received 11-7-00.

Pierce Atwood's Motion to Quash Subpoena with Incorporated Memorandum of Law and attached exhibit A, filed.

Affidavit of Matthew D. Manahan in Support of Plaintiffs' Motion for Contempt and Plaintiffs' Motion for Contempt and Plaintiffs' Motion to Quash Subpoena with attached exhibits A-H, filed.

" " Proposed Order filed.

" " Request for Hearing, filed.

" "	Pierce Atwood's Motion for Expedited Hearing on its Motion to Quash Subpoena with Incorporated Memorandum of Law, filed.
" "	Proposed Order, filed.
Nov. 8	Received 11-8-00.
	Plaintiffs' Memorandum in Opposition to Defendants' Answer and Objection to Plaintiffs' Motion for Contempt with attached exhibit A, filed.
" "	Plaintiffs' Memorandum in Opposition to Defendants' Motion to Quash Subpoenas, filed.
" "	Defendants' Memorandum in Opposition to Motion to Quash with attachments, filed.
Nov. 8	On 11-8-00.
	Pre-Hearing Conference held in open court.
	No objections by counsel to requests for expedited hearings on pending motions to quash.
	As to Pierce Atwood's Motion to Quash Subpoena:
	Motion to Quash is withdrawn in light of withdrawal of subpoena on Pierce Atwood. (Crowley, J.)
	As to Plaintiff's Motion for Expedited Hearing on Plaintiff's Motion for Enforcement of Judgment:
	Granted. Hearing to take place at the time and place of hearing on motion for contempt. (Crowley, J.)

Counsel for Plaintiff indicates to the court that no witnesses will be called on their behalf.

Counsel for Defendant outlines for the court the witnesses they will call and the issues they will testify about.

Counsel for Intevenor [sic] takes no position on pending motion for contempt.

As to Defendants' Motion to Quash Contempt Subpoenas:

Motion to Quash granted as it pertains only to obligations to produce documents pursuant to the subpoena. (Crowley, J.)

Court outlines for counsel, after argument, what testimony will be allowed during the hearing on the motion for contempt.

Any additional memoranda to be filed not to exceed 10 pages.

Court recesses to 9:00 a.m. on 11-9-00 at the Androscoggin County Superior Court.

Crowley, J. Presiding, Lori Dunbar court reporter, Matthew Manahan, Esq. for Plaintiff, Melissa Hewey, Esq. for Defendants and William Stokes, AAG for Intervenors.

Copies to be given to Matthew Manahan, Esq., Kaighn Smith, Esq., Mark Chavaree, Esq. and William Stokes, AAG on 11-9-00.

Nov. 9 Received 11-9-00.

Plaintiff's Supplemental Memorandum in Reply to Defendants' Answer and Objection to Plaintiffs' Motion for Contempt with exhibits A-H filed.

Nov. 13 Received 11-9-00.

Defendants' Memorandum Regarding Adminissibility [sic] of Defendants' Inability to Comply, filed.

" " On 11-9-00.

Hearing held in Androscoggin Superior Court on Plaintiff's Motion for Contempt. Defendants make an offer of proof as to order to comply and legality of order of September 19, 2000.

Court will not allow evidence as to tribal law and reservation government. Defendants' exhibits 1, 2, 4, 5, & 6 (in manila envelope) entered as an offer of proof only.

10:45 a.m. Plaintiffs' Opening Statements.

10:50 a.m. Defendants' Opening Statements.

Defendants' Exhibits:

5. Copy of letter from Mark Chavaree, Esq. to Matthew Manahan, Esq. dated 5-18-00 Offered/Admitted

20. Copy of letter from Kaighn Smith, Esq. to Matthew Manahan, Esq. dated 10-16-00 Offered/Admitted

Exhibits with clerk's notes in file.

11:25 a.m. Defendants rest.

Closing Arguments.

Court rules on motion for contempt. Defendants are in contempt of Order on 9-19-00. Court orders imprisonment as to individual defendants, Barry Dana, Richard Doyle and

Richard Stevens until compliance with court order of Sept. 19, 2000. Court orders a fine of $1000.00 per day against the Penobscot Indian Nation and the Passamaquoddy Tribe until compliance with court order of 9-19-00. Order to be filed by the court. Defendants' Oral Motion to Stay heard in open court. Court grants motion. Order stayed until 11-13-00 at 9:00 a.m. If an appeal or certification in writing that Defendants will comply with order of 9-19-00 is not provided by 11-13-00 at 9:00 a.m., Defendants to report to Androscoggin County Jail. Individual defendants execute Personal Recognizance bail bonds with condition to report to Androscoggin County Jail on 11-13-00 at 9:00 a.m. unless appeal is filed or compliance with Order of 9-19-00 is met. (copies in file)

If Defendants do not report to Androscoggin County Jail, warrants to be issued without bail.

As to Plaintiff's Rule 70 motion – motion denied.

Crowley, J. Presiding, Penny Carver court reporter, Matthew Manahan, Esq. and Kevin Gordon, Esq. for Plaintiffs; Kaighn Smith, Esq. and Melissan [sic] Hewey, Esq. for Defendants and William Stokes, AAG for Intervenors.

" " Received 11-9-00.

Order on Motion for Contempt, filed. (Crowley, J.)

The Court finds each of the Defendants in contempt of the Order of September

19, 2000 and imposes the following sanctions:

As to the Individual-Defendants, Barry Dana, Richard M. Doyle, and Richard Stevens: The Court orders coercive imprisonment in the Androscoggin County jail until such time as they comply with the Order of September 19, 2000 or the Individual Defendants certify in writing under oath that they will make all reasonable efforts to immediately comply with said order, and thereafter do turn over the ordered documents.

As to the Non-individual defendants, the Penobscot Indian Nation and the Passamaquoddy Tribe: The Court orders a coercive fine of $1000 per day for each day they are in contempt until they comply with the Order of September 19, 2000 or provide a certification in writing under oath that they will make all reasonable efforts to immediately comply with said order, and thereafter do turn over the ordered documents.

As to all Defendants, the Order is suspended and the Defendants are not subject to imprisonment or fines hereunder duing [sic] such time that a timely appeal of the Order of September 19, 2000 or October 18, 2000 or this Order of Contempt is pending. The Court will review the Defendants' compliance and consider the imposition for additional and/or different sanctions at a hearing to be held on December 20, 2000 at 9:00 a.m. in the York County Courthouse,

Alfred, Maine provided the Defendants are not then in compliance and no appeal is then pending.

The imposition of this Order as to the Individual Defendants is stayed until November 13, 2000 at 9:00 a.m. and the Individual Defendants are released on their personal recognizance until such time. The Plaintiff's Rule 70 Motion seeking the Court to direct the production of documents by its appointee is denied.

Copies given in hand to Matthew Manahan, Esq. and Kaighn Smith, Esq. on 11-9-00.

Copy mailed to William Stokes, AAG on 11-9-00

Nov. 13 Received 11-9-00 continued.

Copy mailed Mark Chavaree, Esq. on 11-13-00.

" " Received 11-9-00.

Plaintiff's Transcript Order filed.

" " On 11-13-00.

Plaintiff's Transcript Order mailed Penny Carver, court reporter this day. (copy in file)

" " Received 11-13-00.

Defendants' Notice of Appeal, filed. ($120.00 appeal fee paid)

Defendants hereby appeal the Superior Court's judgment entered on October 18, 2000, to the extent that judgment makes final the Superior Court's denial of the

Defendants' Motion to Dismiss by order dated September 19, 2000 and the Superior Court's denial of the Defendants' Motion for Relief by order dated September 27, 2000.

" " On 11-13-00.

Attested copies of Notice of Appeal and Superior Court docket entries mailed Matthew Manahan, Esq., Catherine Connors, Esq., Kaighn Smith, Esq., Gregory Sample, Esq., Mark Chavaree, Esq. and William Stokes, AAG; copies given in hand to James Chute, Clerk of the Law Court; attested copy of Notice of Appeal mailed Kathy Casey and given Justice Robert Crowley this day.

Nov. 14 Received 11-14-00.

Correspondence from the Law Court, RE: Entire file due 12-4-00, filed.

Nov. 16 Received 11-15-00.

Defendants' Amended Notice of Appeal, filed. (Crowley, J.)

Defendants hereby appeal the Superior Court's judgment entered on October 20, 2000, to the extent that judgment makes final the Superior Court's denial of the Defendants' Motion to Dismiss by order dated September 19, 2000 and the superior Court's denial of the Defendants' Motion for Relief by order dated September 27, 2000.

" " On 11-16-00.

Attested copies of side 1 of page 6 of the docket entries and Amended Notice of

Appeal mailed Matthew Manahan, Esq., Catherine Connors, Esq., Kaighn Smith, Esq., Gregory Sample, Esq., Mark Chavaree, Esq. and William Stokes, AAG; copies given James Chute, Clerk of the Law Court this day.

Nov. 29 On 11-29-00.

L-A-W

Entire original file (4 folders) including one transcript, Index and attested copy of Superior court entries hand delivered to James Chute, Clerk of the Law Court.

" " On 11-29-00.

Attested copies of Index and Superior Court docket entries mailed Matthew Manahan, Esq., Catherine Connors, Esq., Kaighn Smith, Esq., Gregory Sample, Esq., Mark Chavaree, Esq. and William Stokes, AAG.